Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing	)	CG Docket No. 04-208

To: The Commission

COMMENTS OF DOBSON COMMUNICATIONS CORPORATION

Dobson Communications Corporation[1] ("Dobson") hereby submits its comments in response to the Commission's March 18, 2005, *Second Further Notice of Proposed Rulemaking*[2] in the above-captioned proceeding. Dobson, a leading provider of commercial mobile radio services ("CMRS") to rural communities in sixteen states, is concerned by the alarming increase in the state regulation of and the litigation over the billing practices of wireless carriers. Because the resulting patchwork quilt of state regulation increases the costs of providing service to consumers and has the potential to hinder competition, particularly from smaller local and regional carriers, Dobson has a particularly strong interest in this proceeding.

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[1] Dobson is one of the largest providers of rural and suburban wireless communications services in the United States, offering services to a population base of 11.8 million people in sixteen states stretching from Alaska to New York. Dobson operates through two primary subsidiaries, Dobson Cellular Systems, Inc. and American Cellular Corporation and offers services under the CELLULARONE® brand in all its markets except for those in western Oklahoma and the Texas panhandle, where Dobson uses the DOBSON CELLULAR SYSTEMS® service mark.

[2] *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, FCC 05-55 (rel. Mar. 18, 2005) ("*Second Report and Order*" and "*Second Further Notice*").

Dobson applauds the Commission's decision to preempt state regulation on the use of line-item charges in recognition that such line-items are part of a carrier's rate structure. For the reasons discussed below, Dobson urges the Commission to go even further and preempt state regulation that otherwise seeks to regulate how line-item charges are labeled, described, or disclosed. CMRS is inherently an interstate service. Not only do radio waves not stop at state boundaries, as the Commission well knows, but the geographic service areas licensed by the Commission for CMRS are based on communities of interest and can extend into more than one state.[3] Moreover, consumers increasingly demand service areas that extend outside of their town, county, and state. Accordingly, the footprints of national and regional carriers, and even some smaller local carriers, have expanded over time and now extend across many state and local jurisdictions. If the national regulatory framework envisioned by Congress for CMRS is to be realized, a uniform policy must therefore apply to billing. Otherwise, carriers will be unduly burdened with inconsistent requirements that vary by jurisdiction and artificially increase the cost of service for consumers.

In furtherance of a uniform national policy, Dobson supports the adoption of standardized labels and safe harbors for regulatory-related line-items that will both minimize consumer confusion and provide carriers with the certainty that their billing descriptions will pass muster in the states in which they operate. If new requirements are adopted, however, the Commission must recognize that any required changes to billing formats and permissible line-items will impose a financial cost on carriers and will require sufficient lead time to implement. Moreover, any new requirements adopted that alter the costs that can be recovered through a line-item charge should apply prospectively, so as not to frustrate the existing contractual relationships between the carrier and its customers.

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[3] For example, Dobson holds a cellular license for the Cumberland, MD-WV MSA that includes areas in both Maryland and West Virginia. In addition, broadband PCS service areas, which are allocated according to Basic and Major Trading Areas, are made up of areas that are frequently located in more than one state.

I. DISCUSSION

A. Dobson Supports Truth-In-Billing And A Uniform National Policy.

As the Commission well knows, the CMRS industry is highly competitive, and to retain customers and increase market share, carriers must keep their subscribers satisfied. Carriers therefore have every incentive to inform customers, in advance of getting their commitment, about additional charges to minimize potential confusion or frustration. To help consumers make informed choices and promote customer satisfaction, Dobson, like so many wireless carriers, has adopted CTIA's Consumer Code for Wireless Service ("Consumer Code"); as a result, Dobson has agreed to provide consumers with information on services, rates, and additional charges at the point of sale and in collateral material.[4]

The industry's voluntary efforts to adopt more understandable billing practices appear to be working. For example, there has been a sharp decline in the number of informal wireless complaints filed with the Commission during the 4th quarter of 2004, dropping to 4,369 from 9,120 with billing and rate complaints leading the decline by more than 50 percent.[5] Given that the total number of wireless subscribers exceeded 160 million as of December 2003, the total number of complaints continues to be relatively small.

Ironically, then, as competitive pressures mount on CMRS carriers to provide more services at lower rates, the services of CMRS carriers are being subject to increasing regulatory costs in terms of both tax burdens and unfunded regulatory mandates. On one side, state and local jurisdictions are increasingly looking to wireless providers as a source for new tax revenues. On the other side, governmental authorities have continued to impose unfunded regulatory mandates on the industry, including requirements for the Communications Assistance for Law Enforcement Act ("CALEA"), Enhanced-911 ("E911"),

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[4] *See* Consumer Code, Article One (found at http://files.ctia.org/pdf/The_Code.pdf).

[5] *See FCC News Release*, "Quarterly Report on Informal Consumer Inquiries and Complaints Released" (rel. Mar. 4, 2005).

number pooling, local number portability ("LNP"), universal service, and telecommunications relay services.

According to one expert, 8.84% of a subscriber's bill, on average, goes to the payment of state and local taxes.[6] In New York, Pennsylvania, and Texas, where Dobson has significant operations, the average can be as high as 16.23%, 13.57%, and 14.19%, respectively.[7] These taxes can take the form of excise or gross receipts taxes, sales or use taxes, 911 fees, universal service fees, and other regulatory fees that effectively enable the state and local governments to greatly increase a carrier's cost of doing business.[8] And the Commission is well aware of the costs incurred by carriers to satisfy public interest mandates. One study estimates that the monthly average cost to consumers for just implementing CALEA, E911, number pooling, and LNP is $2.62.[9] In addition, the wireless industry, as a whole, continues to be a "net payor" into the Universal Service Fund, which further increases the cost of service to consumers.

In response to these increasing regulatory mandates and state and local taxes, carriers have needed to increase the number of line-items assessed on a bill simply to account for these costs, while still being able to offer rate plans competitive with those advertised nationally and regionally.[10] Making changes to a billing format to accommodate these line-

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[6] *See* Mackey, Scott, "The Excessive State and Local Tax Burden on Wireless Telecommunications Service," at Table 1 (rel. June 2004) (attached to Verizon Wireless *Ex Parte* presentation, CC Docket No. 98-170 (filed Dec. 2, 2004)).

[7] *Id.*

[8] *Id.* Hopefully signaling a change in this disturbing trend, the Louisiana State House of Representatives recently defeated a proposed 2 percent "excise tax" on wireless services that would have been in addition to the sales tax already imposed and that would have cost wireless consumers $30 million more a year. *See* Silva, Jeffrey, "La. House Sides with Industry to Kill 2% Tax Plan," RCR Wireless News (rel. June 15, 2005).

[9] *See* Thomas M. Lenard and Brent D. Mast, *Taxes and Regulation: The Effects of Mandates on Wireless Phone Users*, The Progress & Freedom Foundation, Progress on Point Release 10.18 at 2 (Oct. 2003) at <http://www.pff.org/publications/communications/#2003>.

[10] Not unlike airlines or hotels, who advertise their rates, but then add on the various federal, state and local fees separately, CMRS carriers have appropriately incorporated line-items onto their bills to allow them to maintain regional and national rate plans while still collecting local and state (and federal fees) as

item charges for a local market imposes costs for carriers. Those costs are only increased if each state is also allowed to regulate how costs are recovered and disclosed to consumers as collateral marketing material and customer care systems will need to be modified to comply with the various state requirements.[11] In Dobson's Cumberland MD-WV MSA market, for example, allowing both states to establish regulatory requirements for Dobson's billing and collateral materials for subscribers in the market would create the real possibility that two different billing statements would be required depending on the billing address of the subscriber (whether or not that billing address reflected the real area of usage of the subscriber unit). Moreover, allowing states to regulate billing descriptions and disclosures for wireless services increases the carrier's exposure to costly litigation over their billing practices.

The artificially inflated cost of service, resulting from state and local regulation, inevitably hinders competition at the state and local level. Indeed, the varying state and local regulatory requirements can act as a barrier to entry, especially for small and mid-sized carriers that have only a few markets and subscribers to "share" the added costs. While the Commission clearly has no authority to address the states' ability to tax wireless services, the Commission should not allow states to regulate how the carriers recover and inform the public about taxes and other regulatory costs – activities which clearly involve the states in ratemaking. Rather, a national policy maximizing billing flexibility for carriers is clearly warranted, allowing carriers to maximize economies of scale in billing services throughout their regional or national coverage areas.

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appropriate for the local market. The billing practices of the airline and hotel industries have not triggered the same governmental scrutiny, however, as have the practices of the wireless industry.

[11] *See* Verizon Wireless, *Ex Parte* Presentation, CC Docket No. 98-170 at 5-7 (filed Jan. 25, 2005) (providing information on the state regulation of line items and other billing practices); Nextel Communications, *Ex Parte* Presentation, CG Docket No. 04-208 (filed Dec. 22, 2004).

Accordingly, Dobson welcomes the Commission's decision to preempt states from requiring or prohibiting surcharges, recognizing that such charges are part of a carrier's rate structure.[12] The Commission should go even further, however, and preempt, as tentatively concluded in the *Second Further Notice,* states from enacting and enforcing specific truth-in-billing rules beyond the rules, guidelines, and principles adopted by the Commission.[13] Consumers increasingly prefer single-rate plans covering an entire state, multiple states in a region, or the entire nation. Having to comply with billing and disclosure requirements that vary by jurisdiction is unduly burdensome for carriers with the additional costs for customizing bills, rate plan brochures, website information, and television and radio advertisements being passed on to consumers. While varying state-specific regulatory costs (taxes and fees) can result in anomalies in the total amount billed to individual subscribers for the same rate plan in a large, multi-state or even multi-jurisdictional region,[14] the carriers should be free to advertise a single base rate without running afoul of an individual state's billing disclosure laws.[15] Mobile telephony is inherently an interstate service and the public will be best served if a uniform national policy is applied.

B. The Commission Has Authority To Preempt State Law When It Comes To The Billing Practices Of CMRS Providers.

The Commission has authority to preempt conflicting state law relating to CMRS billing. Sections 201(b) and 205(a) of the Communications Act of 1934, as amended (the "Act"), gives the Commission express statutory authority over the billing practices of

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[12] *Second Report and Order* at ¶ 30.

[13] *Second Further Notice* at ¶ 53.

[14] For example, a subscriber living and billed in Montgomery County, Maryland could end up paying more for the same rate plan for wireless service throughout the District of Columbia metro area than a subscriber living and billed in Arlington County, Virginia will pay, even though both consumers are purchasing the same "rate plan" from a carrier.

[15] This is no different than would occur if a customer purchased an advertised item of clothing from a department store chain with locations in Virginia, Maryland and the District of Columbia; because of different sales tax rates, the amount actually paid for the same advertised clothing would be different in each of the three store locations. But the department store only advertises one price in the regional media.

common carriers. In particular, Section 201(b) gives the Commission authority to prescribe rules to ensure that charges, practices, classifications, and regulations are just and reasonable.[16] Section 205(a) further authorizes the Commission "to determine and prescribe what will be a just and reasonable charge . . . and what classification, regulation, or practice is or will be just fair, and reasonable . . . ."[17] The use of a particular line item charge along with the associated label, description, and disclosure clearly falls within the Commission's express authority over charges, practices, and classifications.

Moreover, in amending Section 2(b) and 332 of the Act in 1993 to preempt state regulation over CMRS entry and rates, Congress expressed its preference for a national regulatory framework for CMRS to ensure regulatory parity for all CMRS offerings, which "by their nature, operate without regard to state lines."[18] While Congress left the states with authority over "other terms and conditions," Dobson agrees with the Commission's tentative conclusion that this role is limited to the enforcement of state contractual and consumer protection laws of general application. A different interpretation would allow this limited statutory exception to undermine the national CMRS framework that Congress sought to create.

C. The Commission Should Adopt Standardized Labels.

The Commission correctly has allowed CMRS carriers to use line-item charges to recover costs attributed to regulatory action. Dobson recognizes, however, that with each carrier using a different, but similar, label and description, consumer confusion can easily result. Dobson, therefore, supports the Commission's proposal to adopt standardized labels (or safe harbors developed by industry) for line-item charges used to recover costs

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[16] 47 C.F.R. § 201(b).

[17] 47 C.F.R. § 205(a).

[18] *See* 47 C.F.R. §§ 152(b), 332; H.R. Rep. No. 103-111, at 260 (1993).

attributable to regulatory compliance.[19] This will have the positive impact of minimizing confusion among consumers and facilitating comparison shopping, while still allowing carriers to exercise their right to commercial speech.[20] Standard labels, adopted by the Commission, should also limit litigation over the descriptions used by wireless carriers to describe such charges.

Dobson would support not only standardized labels but also standardized descriptions to remove all doubt that a charge is not misleading. If, however, the Commission believes that such an approach would raise First Amendment concerns, because a government restriction would apply to both the label and the description, the Commission can instead adopt safe harbor verbiage for use in describing particular line items that is determined through industry consensus.[21] A safe harbor approach would provide carriers ample flexibility to design particular line-item descriptions if they chose to do so, while giving carriers that choose the safe harbors some certainty to minimize costly litigation.

D. The Commission Must Recognize That Any Required Changes To The Billing Format Will Come At A Cost And Must Provide an Adequate Transition For Future Implementation.

In considering changes to the labels, descriptions, and placement of line-item charges, the Commission must be cognizant of the resulting costs imposed on carriers by any such mandates. Moreover, the Commission should recognize that billing systems are complex, and it may take many months to effectuate any change in the billing format. The cost and implementation time would be multiplied, of course, if carriers must implement changes to

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[19] *See Truth-In-Billing and Billing Format*, CC Docket No. 98-170, *First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 7492 ¶ 71 (1999) ("*First Report and Order*").

[20] Standardized labels will also help to preempt the field, barring state and local regulations.

[21] *See First Report and Order* at ¶ 60 (citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-64 (1980)) (concluding that standardized labels would not run afoul of the First Amendment, because while the proposed labels would be standardized, carriers would still be free to describe fully the nature and purpose of these charges in their own words).

comply not only with national but also varying state and local requirements, which further underscores the need for a national uniform framework.

Dobson does not yet have the economies of scale to justify having its own personalized billing system. Accordingly, Dobson does not have the same flexibility to unilaterally make changes to the billing system as would a larger carrier with an internal system. As a result, Dobson has outsourced its billing and customer care systems for all its markets to Convergys Corporation ("Convergys"). Under the service bureau arrangement, Convergys administers and maintains the Convergys Atlys® billing and customer care systems for Dobson at Convergys' data center to support Dobson's wireless voice and data services as well as emerging technology offerings.

Because of how certain pages in Dobson's bill format are designed (*e.g.*, the page describing all terms used in Dobson's bill is programmed in hard code to maximize the number of characters on the page), any change to the label or description of a line-item charge will require both a program code and a reference data change; even a single change to a line-item charge could take 3-6 months to implement and impose significant costs on the company. The Commission cannot ignore such burdens when considering any new billing requirements; at the very least, if any new requirements are imposed, a reasonable transition must be provided to avoid disrupting the carriers' ongoing business operations.

Finally, while the Commission has indicated some concern as to whether past practices might be inappropriate for future use, *e.g.*, whether and which costs will be recoverable through a line-item charge, it is imperative that any changes that the Commission imposes must only apply prospectively to new customer agreements and bills. The Commission should refrain from requiring any changes that would unilaterally and adversely impact existing contractual relationships between the carrier and its customers. While the Commission may determine that, in the future, certain charges may not be recovered through

line-item charges, it also cannot ignore that carriers have developed their rate structures contemplating that such cost recovery would be allowed. To impose a prohibition on such recovery under existing contractual relationships, potentially imposing substantial revenue shortfalls on carriers, would clearly frustrate carriers' ability to compete in the marketplace. And the impact of such an approach is likely to fall hardest on the smaller carriers, already struggling to compete in less densely populated areas with rates that mirror those of the nationwide carriers. While the Commission may choose to regulate line-item charges in the future, it should not modify existing carrier relationships with their customers for rates fixed under long-term service agreements.

II. CONCLUSION

For the reasons stated above, Dobson urges the Commission to adopt a uniform national policy for the billing practices of CMRS providers and to preempt all state laws that are inconsistent with the national framework. To this end, Dobson supports the adoption of standardized labels and safe harbors for certain line-items to mitigate consumer confusion and avoid costly state litigation.

Respectfully submitted,

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